EXECUTIVE S[illegible]RETARIAT

ROUTING SLIP

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		ACTION	INFO	DATE	INITIAL
1	DCI				
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SUSPENSE ____________ Date

Remarks

[redacted]

STAT

Executive Secretary

19 Sept 85

Date

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THE WHITE HOUSE
WASHINGTON

Trade Legislation Strategy

CABINET AFFAIRS STAFFING MEMORANDUM

Date: 9/19/85 **Number:** 316994CA **Due By:**

Subject: Economic Policy Council Meeting - September 20, 1985

1:30 P.M. -- Roosevelt Room

	Action	FYI
ALL CABINET MEMBERS		
Vice President	X	
State	X	
Treasury	X	
Defense		X
Justice		X
Interior		
Agriculture	X	
Commerce	X	
Labor	X	
HHS		
HUD		
Transportation	X	
Energy		
Chief of Staff	X	
Education		
OMB	X	
CIA		X
UN		
USTR	X	
GSA		
EPA		
NASA		
OPM		
VA		
SBA		

	Action	FYI
CEA	X	
CEQ		
OSTP		
McFarlane		X
Svahn		X
Chew *(For WH Staffing)*	X	
Hicks		X
Executive Secretary for:		
DPC		X
EPC	X	

REMARKS:

There will be an Economic Policy Council meeting on Friday, September 20, at 1:30 P.M. in the Roosevelt Room.

The agenda and background papers are attached.

RETURN TO:

☑ Alfred H. Kingon
Cabinet Secretary
456-2823
(Ground Floor, West Wing)

☐ Don Clarey
☐ Rick Davis
☐ Ed Stucky

Associate Director
Office of Cabinet Affairs

THE WHITE HOUSE

WASHINGTON

September 19, 1985

MEMORANDUM FOR THE ECONOMIC POLICY COUNCIL

FROM: EUGENE J. McALLISTER EM

SUBJECT: Agenda and Papers for the September 20 Meeting

The agenda and papers for the September 20 meeting of the Economic Policy Council are attached. The meeting is scheduled for 1:30 p.m. in the Roosevelt Room.

The single agenda item is trade legislation strategy. Ambassador Yeutter has drafted a memorandum outlining some of the major considerations involved in the question of trade legislation strategy: should the Administration offer a trade bill, work with Congressional leaders in drafting a bill or simply oppose all legislation. If the Administration decides to transmit a bill or work with Congressional leaders, the trade policy review group has evaluated a number of initiatives that might be included in such a bill. The trade policy review group's efforts are described in an attachment to Ambassador Yeutter's memorandum.

Also attached is a paper outlining the major considerations involved in the question of whether the President should propose to establish a bipartisan commission on international trade and economic issues. The idea of a commission was raised at an earlier Economic Policy Council meeting and the Council asked a small working group to develop the idea more completely.

Attachments

THE WHITE HOUSE

WASHINGTON

ECONOMIC POLICY COUNCIL

September 20, 1985

1:30 p.m.

Roosevelt Room

AGENDA

1. Trade Legislation Strategy

THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON
20506

September 19, 1985

MEMORANDUM

TO: The Economic Policy Council

FROM: Ambassador Clayton Yeutter CY

SUBJECT: Administration Trade Bill

Summary:

On Friday, September 20, the EPC will consider: (1) whether the Administration should initiate trade legislation and, if so, (2) what that legislation should include. This memorandum outlines three legislative options and describes specific proposals the Trade Policy Review Group has recommended for EPC consideration.

Background:

As widely reported, over 300 trade bills are pending in the Congress. The House Republicans have drafted a general trade bill expected to be introduced early next week. Introduction of a Senate Republican trade bill currently being drafted is expected later next week. The House and Senate textile bills could move quickly, as could bills on Japan, surcharges, telecommunications, and trade adjustment assistance.

Option 1: An Administration Trade Bill

Under this option, an Administration trade bill would be transmitted to Congress. To be effective, any Administration bill would have to be announced and outlined very quickly and introduced as soon thereafter as possible.

Pros:

- o Provides Administration leadership on trade at a time of growing trade deficits and rising political tensions.
- o Shifts political momentum on trade from Congress back to Administration.

- o Provides the Administration's Congressional friends -- many of whom are up for re-election next year -- constructive legislation to vote for; and thus may reduce support for intolerable bills.

- o Gives us full control of content prior to introduction, and then provides a vehicle for immediate hearings, deflecting attention from and delaying action on protectionist bills.

<u>Cons</u>:

- o Will be criticized as cosmetic and inadequate, since the package is relatively slim.

- o Runs the risk of the Administration bill becoming the vehicle for protectionist riders; creates the potential dilemma of the President vetoing his own legislative initiative.

- o Detracts from other major Administration initiatives, such as tax reform.

- o Will inevitably require compromises to secure passage of an Administration bill.

<u>Option 2: Work with Congress</u>

Under this option, we would work with the Congressional leadership in developing legislation acceptable to us, without introduction of an Administration initiative.

<u>Pros</u>:

- o Provides executive branch leadership, with less political exposure than is involved with an Administration bill.

- o Allows us to influence the legislative agenda.

- o Permits hearings to be held on our concerns.

- o Affords an opportunity for a bipartisan approach to trade issues if responsible Democrats are prepared to depoliticize issue.

<u>Cons</u>:

- o Leaves Congress in control, and may be perceived as continued Administration disinterest in trade.

- Reduces leadership role of President and opportunities to enhance his involvement and credibility on trade issues.
- May not deflect protectionist pressures as well as an Administration bill.
- May not have as much immediate political impact as an Administration bill, at a time when we need all the help we can get on textile legislation.

Option 3: Administration Opposition to all Trade Bills

The Administration could simply oppose those measures, threatening a Presidential veto of the most protectionist, such as textiles. Rather than including a legislative initiative, the Administration's trade package could be limited to better articulation of the Administration's trade policy (as through the President's trade speech and the EPC trade strategy paper) and more aggressive action against unfair trade practices (as through the recently self-initiated Section 301 cases). The pros and cons of this option are the converse of those for Option 1.

I have discussed all these legislative ideas with Congressional leaders in recent days and will share their input with the EPC group tomorrow.

Proposals Unanimously
Approved by TPRG

The TPRG unanimously approved the following proposals for inclusion in any trade bill initiated by the Administration:

1. Trade Policy Objectives.

The preface to any Administration trade bill would be a clear, forceful statement of the Administration's trade policy objectives.

2. Trade Negotiating Authority.

An Administration bill would provide authority to support its trade negotiating initiatives, including:

-- statement of the Administration's objectives for a new round;

-- authority for a new round of negotiations;

-- extension of our non-tariff barrier negotiating authority, which otherwise expires January 3, 1988;

-- authority to reduce tariffs; and

-- authority to offer compensation to other countries when the U.S. increases tariffs (through Congressional action or Customs reclassification), to avoid unilateral foreign retaliation against U.S. exports.

3. Intellectual Property Rights.

We should also provide further protection to intellectual property rights (patents, copyrights or trademarks), including:

-- protection against trade in articles that infringe U.S. process patents;

-- extension of the patent term for agricultural chemicals to match that for pharmaceutical inventions;

-- elimination of the requirement in Section 337 of injury to an efficiently and economically operated U.S. industry as a precondition for relief where the International Trade Commission found a patent, trademark or copyright infringement;

-- more liberal licensing of technology under the antitrust laws; and

-- greater protection for "firmware" through amendments to U.S. copyright law.

4. Export Promotion.

An Administration bill would promote U.S. exports through:

-- authorization and appropriation of approximately $300 million in "war chest" grant funds to enable the Administration to offer $1 billion in mixed credit loans to targeted buyers. This program is designed to enable U.S. exports to compete effectively in third country markets until we can eliminate predatory mixed credit competition through negotiations; and

-- clarification of the accounting provisions and liabilities of foreign agents under the Foreign Corrupt Practices Act of 1977 to reduce disincentives to export.

5. Technical Amendments to Trade Laws.

An Administration bill could propose minor changes to the antidumping and countervailing duty laws, including:

-- treatment of an agricultural raw material and a processed product made from it as a single "like product" if: (1) there is a continuous line of production (that is, there is no other significant use of the input except to make the processed product; for example, live swine and processed pork products); and (2) the producers of the inputs and processed products are economically integrated [alternatively, expansion of the criteria for threat of material injury to cover likely increases of processed imports as a result of restrictions or duties imposed on imports of an input];

-- revision of the "critical circumstances" standards so that more timely relief can be provided more often;

-- interpretation of "international obligations of the United States" to mean countries with which the U.S. has reciprocal, substantive obligations;

-- provision of an injury review in countervailing duty cases for countries entitled to it when previously dutiable imports become duty-free (as under GSP or CBI);

-- codification of existing Administration practice regarding provision of the injury test in countervailing duty cases to less developed countries;

-- clarification that the petition requirements for small businesses are less rigorous than for large businesses;

-- technical corrections to the antidumping and countervailing duty provisions of the Trade and Tariff Act of 1984; and

-- other technical amendments proposed by the Administration last year but not enacted at that time, such as conforming the time periods for administrative reviews of antidumping and countervailing duty orders.

Section 301 amendments would include:

-- enactment of a 24-month deadline on dispute settlement; and

-- provision of extensions at petitioner's request.

Section 201 amendments would include:

-- provision of some type of "fast track" procedure for perishable agricultural items; and

-- promotion of structural adjustment, by requiring the International Trade Commission to assess the petitioning industry's prospects for adjustment to changing conditions of competition.

Possible Elements of an Administration Trade Bill

Outlined below are proposals requiring EPC review because of lack of unanimity.

Separate EPC meeting

1. Trade Adjustment Assistance.

If approved by the EPC at a separate meeting, any trade adjustment assistance proposal should be included in any Administration trade bill.

2. Telecommunications.

Senator Danforth's telecommunications reciprocity bill was approved by the Senate Finance Committee on September 17. Many agencies believe any Administration trade bill should include its major points, minus mandatory retaliation and the harshest sectoral features (such as the requirement to achieve substantially equivalent competitive opportunities). In other words, the Administration could agree: (1) to identify obstacles to fair and equitable market opportunities abroad for U.S. telecommunications equipment and services; (2) to seek, through negotiations, removal of those obstacles; and (3) to authorize the President to take all appropriate measures (including retaliation) to attain such fair and equitable market opportunities. Where the President negotiated an agreement or decided to retaliate, he would be authorized to send a bill to the Congress for "fast track" approval of any compensation the President believed was required.

While such provisions would lack the harsh sectoral reciprocity desired by Danforth and allow the President to avoid retaliation, they would evidence the Administration's desire to try to accommodate Congressional and business community concerns, and to promote U.S. exports.

Pros:

- Responds to widespread concern in the Congress and the business community and provides a constructive alternative to a more onerous Danforth bill.
- Promotes U.S. high technology, an area of great importance to this country in the future.
- Is consistent with the Administration's initiatives to promote U.S. exports.
- Authorizes "fast track" compensation where negotiated agreements or U.S. retaliation would require it.

Cons:

- o Puts pressure on the President if he finds closed markets but declines to take meaningful action.

- o Despite elimination of harshest sectoral features, is a step toward sectoral reciprocity, opposed by the Administration, and sectoral negotiating authority.

(Some noted that while originally perceived as a "Japan" bill, progress in the Japanese telecommunications talks could obviate the need for application of any telecommunications bill to Japan.)

3. Stumpage Problem.

If the Administration wants Senator Packwood to sponsor any Administration bill, it must consider what, if anything, it can do in response to U.S. forest products producers' claim that Canadian stumpage is sold at an unfairly low price to their detriment. This is an issue, however, that should be dealt with subsequent to the receipt of the USITC study on stumpage (due October 8).

✓ 4. Nonmarket Economy Trade Remedy.

The Administration has long agreed in principle to replace the antidumping and countervailing duty laws with a predictable pricing test for nonmarket economies, although it has not agreed on the application of the injury test and the appropriate benchmark against which to judge NME import prices. The TPRG recommends that any Administration bill propose: (1) to provide an injury review where required by our international obligations, interpreted to include the U.S.-China Agreement on Trade Relations; and (2) to establish as the benchmark the lowest average free market import price.

Because a predictable pricing test would depart significantly from past practice under the dumping law, it should be time-limited to permit its trial use.

X 5. Expansion of FSC to Cover Services.

The Foreign Sales Corporation Act could be expanded to apply to services as well as goods, provided that the revenue cost was not too high.

Treasury opposes because it believes it would be expensive, it contradicts the Administration's tax reform objective of eliminating tax preferences, it is unlikely to be cost effective, and it would not "buy off" those who support protectionism. OMB also opposes.

6. Intellectual Property Rights.

The TPRG unanimously favored terminating Freedom of Information Act abuses by giving affected companies notice and an opportunity to oppose release of their business confidential information. However, Justice prefers to delete this item from any trade bill, in order to enhance its effectiveness in soliciting support for a separate Justice legislative package on the Freedom of Information Act.

7. Amendment to the Antidumping and Countervailing Duty Law.

Other agencies supported, and Justice opposed, eliminating two-tiered judicial review in antidumping and countervailing duty cases, and thus limiting appeal of Department of Commerce and International Trade Commission decisions to the Court of Appeals for the Federal Circuit. Justice's concern is the lack of any significant jurisdiction for the lower Court of International Trade (CIT) that would result, and opposition from the New York delegation (and possibly New Jersey), which enjoys prerogatives concerning CIT appointments.

8. Export of North Slope/Cook Inlet Oil.

If the EPC separately decides to seek authority to export North Slope or Cook Inlet oil, that authority should be included in any trade bill.

9. Antitrust Amendments.

Commerce favors, and Justice opposes, providing a limited exemption from the antitrust laws as an additional, optional Presidential remedy in Section 201 escape clause cases. Treasury believes such an exemption should be in lieu of import relief.

10. USDA License Authority.

USDA could be authorized to delay or withhold import licenses that it is authorized to provide for certain agricultural imports. This authority could be used as leverage in agricultural negotiations.

Commerce expressed reservations about this proposal, until the specific provision is clarified.

11. Exportation of New, Unapproved Drugs.

U.S. companies could be authorized to export new drugs and biologicals not yet approved by the Food and Drug Administration to countries where they can lawfully be sold.
State opposes this provision.

MEMORANDUM FOR THE ECONOMIC POLICY COUNCIL

SUBJECT: Presidential Commission on Trade Policy

I. Proposal

Should the President establish a bipartisan Commission on International Trade and Economic issues?

II. Discussion

The Presidential Commission concept should be viewed in the context of an overall trade strategy. It is highly unlikely that it will, by itself, stem the flow of protectionist legislation. However, if properly established, a Commission may offer an opportunity to buy some valuable time, build a consensus for a national trade policy and provide a middle ground for those Members of Congress under increasing pressure from their protectionist colleagues.

There is historical precedent for a Commission. The 1971 Williams Commission Report established a blueprint for Presidential action, Tokyo round policy formulation and comprehensive legislation (Trade Act of 1974).

The President is entering into a period of extremely important and sensitive international diplomacy. He cannot afford to sit down with Prime Minister Nakasone in October or Gorbachev in November or enter the Tokyo Summit appearing out of control of U.S. international economic policy, or reluctantly presiding over a nation which has declared economic warfare upon it allies.

III. Objectives in Establishing A Commission

1. Provides vehicle for Presidential leadership. By proposing this approach, the President puts the Congress in the position of rejecting bipartisan leadership at a perilous time in our history.

2. When considered as part of a trade action package, a commission may help to deliver enough votes to sustain a Presidential veto of the first wave of protectionist bills by giving less than enthusiastic co-sponsors a reason not to override.

3. Once a veto is sustained, a commission could provide a vehicle or excuse for Congressional postponement or delay of further deleterious

legislative initiatives thus creating a better atmosphere for Presidential summitry.

4. A commission may be helpful in developing a consensus for long term trade strategy.

5. In the context of the proposed new round of multilateral trade negotiations, a commission may also provide some of the hard technical analysis that will be necessary in determining the best negotiation strategies for the U.S. and assist in establishing a broader consensus of support than has been achieved through existing trade advisory systems.

6. Provides a vehicle for building a national, bipartisan consensus (as in the case of the Williams Commission).

7. De-emotionalizes the atmosphere by focusing attention upon economic realities instead of political pressures. The President will demonstrate that he is not afraid of the economic facts and figures regarding free trade, protectionism and the cause of the trade deficit.

8. Provides an opportunity, under Presidential leadership, to engage in long range forecasting and planning involving a variety of institutions and constituencies.

9. May identify some of the adjustments and displacements which are likely to occur over the longer term and provide recommendations for U.S. policies toward those changes, e.g. job retraining, essential industries.

IV. Disadvantages to a Commission

1. The Congress may interpret a proposal for a commission as an effort to deprive them of the political benefits of the trade issue, without offering anything of value in return.

2. If a commission is to report in the short term, there is a problem in matching the charter of the commission with the objectives. A short-term commission would be more valuable in addressing the objectives slowing protectionist legislation and preserving the President's posture going into the Gorbachev summit. Yet short term commission offers greater peril in developing policy recommendations contrary to the President's.

3. If the commission is to report in the short term and have as part of its mandate the preparation of negotiating strategies for a new trade round, it could duplicate existing trade advisory structures established by the Trade Act of 1974.

4. Could divert USG analytical resources at a time of intense activity related to new round and legislation. (Williams Commission made heavy demands -- at a more tranquil time.)

V. Key Questions

There are a number of questions involved in establishing a commission:

Structure

1. What should the size of the commission be?

2. What should the membership be? All members chosen by the President? Congressional membership chosen by the leadership?

3. Who should serve as chairman?

Timing

Should the commission report its findings before the 1986 elections or after?

Mandate

What should be the commission's mandate be?

Some possible approaches include:

Macroeconomic Approach

- Identify the major trends and changes which are taking place in the international economy and make recommendations for U.S. policies toward those changes: for 5 years, 10 years, into the 21st century. Identify the displacements and adjustments which are likely to occur within the U.S. economy during each of those periods and provide recommendations for policies to meet those changes.

Microeconomic Approach

1. What are the underlying causes of the present trade deficit?

   o Is it a long or short-term phenomenon?

- o What has been and will be its likely effect upon American economic well being: upon labor, industry, the consumer?

2. What can be done to ensure that U.S. trade and economic policies over the next 3-5 years contribute as much as possible to maximizing growth in the U.S. and world economies?

3. Identify and analyze the problems of our import sensitive industries, and the policy trade-offs involved in helping them. The report should propose recommendations on whether relief and assistance should be provided such industries, to what degree, and under what circumstances.

4. Identify existing barriers to U.S. exports of goods and services and propose recommendations to eliminate such barriers, e.g.:

   - o Agriculture
   - o Government procurement
   - o Intellectual property

New Round Preparation

Analysis of the objectives of the United States when it enters the upcoming multilateral trade round.

VI. For Further Discussion

The success of a commission as part of the President's overall trade strategy depends in great measure upon the manner in which it is presented to the Congress. Attention must be given to the strategy of selling the idea to the Congressional leadership.